

Chair of Equality, Local
Government and
Communities
Committee

19.12.2019

Dear Chair

Stage 1 inquiry on the Local Government and Elections (Wales) Bill

In responding to this consultation, I will focus specifically on issues that relate to children and young people. This means that I may not cover all areas of the Bill as outlined by the Terms of Reference in the consultation letter, but I have taken this approach to focus on areas that fit within my own legislative remit.

General comments

I note that the majority of the proposals contained within the Bill as presented appear to be in 'outline' only and that a significant amount of detail has been left to be contained in any Regulations that are brought forward should the Bill pass. It has been difficult to get into the details as to how many of the proposals will operate because of this; I am not directly commenting here on the appropriateness or otherwise of secondary legislation for making these type of changes but simply noting that the lack of detail does create a lot of uncertainty in digesting and analysing the proposals.

Votes at 16

I am pleased to see the inclusion of Votes at 16 within the Bill, to align the arrangements for local elections with Welsh national elections following the

passing of the Senedd and Elections Bill last month. Rather than repeat my evidence from the Stage 1 inquiry for that Bill, I've included below a link to my previous written submission , which reflected on the importance of this issue to many young people I have met around Wales. Associated with this is of course a call for greater and more authoritative political education; I am aware of work being undertaken by the Welsh Government and Assembly Commission to develop materials for children and young people ahead of the Assembly Elections in 2021 and I sit as an observer on the working group for this. I am keen to ensure that this work enables young people to become active and informed citizens.

The calls for greater clarity of information for young people resonate clearly with me; young people have approached this issue with a significant degree of reverence and respect, and see voting as a big responsibility. It is crucial that there is clarity on how the voting process works, and for this reason I am unclear on the rationale behind the proposals to allow individual local authority areas to decide whether to use the Single Transferable Vote or the First Past the Post voting systems. At a time where significant change is being made to both local and national elections in Wales, I find it confusing that differing voting systems could be introduced alongside these proposals. I feel that young people who have asked for accessible and clear information about the process should be listened to, and that this additional change may not provide them with the clarity they have sought in this regard.

Barring of candidates

Again, following the successful passing of the Senedd and Elections Bill, I am pleased to see the introduction of specific barring of candidates who are subject to notification requirements under the Sexual Offences Act 2003, or subject to unspent criminal convictions with a term of imprisonment of 3 months or more.

One issue that I have raised in the past, including in the last consultation on local government reform, is Disclosure and Barring Service (DBS) checks for elected members. A potential safeguarding concern was brought to my attention in relation to DBS checks for politicians, including local councillors, Welsh Assembly Members or Members of the UK Parliament. I will set out below the main legislation in relation to this position and the issues that this potentially creates.

Under the Rehabilitation of Offenders Act 1974, there is no requirement for candidates to disclose any spent convictions when seeking election. Such convictions would show up in an enhanced DBS check, which is required for a range of professionals working with children and employed by their local council, including Teachers or Social Workers. Under Schedule 10 of the Criminal Justice and Immigration Act 2008, the position is extended so there is no requirement to disclose any previous warnings and cautions either.

Schedule 1 of the Rehabilitation of Offenders Exceptions Order 1975 sets out certain professions to which the above provision do not apply, which means that candidates applying into certain professions have to disclose any convictions, including spent convictions. These include doctors, solicitors, social workers, youth workers and Judges but it does not include Councillors, AMs or MPs.

Where a candidate has formerly been employed by the council to which they seek election, that council may hold relevant information pertaining to previous conduct or convictions that may make them potentially unsuitable as an election candidate. However, that council would not be permitted to share this sensitive personal data with the political party to which the candidate is seeking election, due to the Data Protection Act 1998; to do so would be a criminal offence. This creates a situation where a local council would not be willing to

allow a person to work with children through an employed role but is unable to prevent them working with children directly should they be successfully elected.

Politicians at all levels will, as part of their jobs, come in to contact with individuals including children and young people, for example in constituency surgeries, visits or events. They can set up youth projects unsupervised. Local Councillors will also have access to personal and sensitive information for children in care through their corporate parenting duties.

Members of the public should be able to approach their locally elected representative with any issues or concerns they may have without fear or concern. I was surprised to learn that there is no DBS requirement for elected politicians; it is something that I thought would happen as a matter of course due to the nature of the role they take on.

I understand that the status of political office is different to being an employee of a local council or national Government. However, the protected status of an elected member means that it is very difficult to remove a person from office once elected; again I understand the reasons for this in a democratic society but it is therefore of high importance that any potential candidates are suitable for the role that is to be undertaken.

In order to ensure public confidence and the safety of young and vulnerable people, it is my view that Political Office should be added to the list of exempted professions under the 1975 Order, requiring any potential candidates to disclose all information including spent convictions, warnings and cautions.

I acknowledge that further thought would be required in order to consider at what point in an individual's candidacy they should complete a DBS check and

whether the political party or the legislative body they are elected to should be responsible for administering this. However, I do not think that this should prevent the matter from being explored in more detail, in order to safeguard all citizens but especially children and young people.

Corporate Joint Committees

There is not much detail within the proposals on the rationale for the introduction of new Corporate Joint Committees (CJC).

During 2019 I've been visiting all of the Regional Partnership Boards (RPBs) across Wales, in order to scrutinise their arrangements for providing for children with complex needs. This is a statutory requirement of these boards, and individual partner agencies have the power to pool funds and apply for grant funding, in order to address issues using a multi-agency approach. I will be reporting on my findings before the end of March 2020, but some initial reflections would be that these Boards have come through the initial 'set up phase' and are now maturing into having new governance structures and arrangements, as suited to each region. It always takes some time for new structures to become embedded and to find their optimum operating arrangements. Where RPBs' focus on children and young people's needs has not been long established, I will be encouraging the Boards to build on this work to ensure that they take a whole system 'no wrong' door' approach to care for children with complex needs.

Alongside RPBs there are also Public Services Boards (PSBs); last year I wrote a joint letter with the Future Generations Commissioner to the Chairs of these Boards, to find out how they operate alongside and in conjunction where appropriate. The feedback we received was quite mixed, and there was a reflection that a lot of time was taken up by lengthy meetings with a lot of papers to read in advance; there was some appetite to streamline some of the

work where possible and to ensure that people weren't having to attend multiple meetings on the same or substantially similar topics.

I note that RPBs are not included in the list of bodies to be consulted when setting up a CJC, although PSBs are included. Although the specified functions are not reserved to RPBs, issues related to education, transport, planning and economic development will be relevant to the Population Needs Assessments that the RPBs are taking forward.

The new CJsCs would be bodies corporate, thus able to receive funding directly and to employ their own staff. This approach has been resisted by the Welsh Government in the past in relation to RPBs and PSBs, despite feedback from both structures about the barriers that are created by not being able to receive and administer grant funding as a specific entity. I cannot tell from the consultation documents what the rationale has been for creating these structures on these specific topics. These topics are also of relevance to other Boards that already exist but it isn't clear how those existing Boards would operate on those topics alongside these new structures. In addition, I note the potential for CJsCs to take over the business of other structures in due course; there is little details on which structures or how this would work in practice.

In general, I was unsure exactly what the new CJsCs were seeking to achieve and how they fit within the existing landscape of other partnership arrangements involving public bodies across Wales. I am aware that the Welsh Government has been undertaking a review of strategic partnerships during 2019, and was therefore surprised to see the introduction of these new structures prior to seeing the outcome of that review.

Transparency

The proposals to increase transparency are particularly interesting, such as new Participation Strategies, a local petitions scheme and a Constitution Guide for members of the public. It is notable however that there is no specific mention of children here. It will be extremely important that the communication needs of children are actively considered when developing proposals and resources aimed at increasing transparency as this shouldn't just be about the adult population.

Children have the right under the United Nations Convention on the Rights of the Child (UNCRC) to receive information in accessible formats and to participate in decisions that affect them. In addition, in order to promote children's rights to health, to play and leisure activities and to adequate funding to support their families to meet their needs, they need to be involved in policy development and decision making across public bodies including local authorities. My guide *The Right Way; a children's rights approach for public bodies in Wales* provides practical guidance for local authorities and others as to how to achieve this, and the importance of doing so in order to improve the quality of decision making and public 'ownership' of the decisions that are taken. All public bodies have a legal duty to contribute toward the realisation of children's rights.

A Children's Rights Approach is consistent with these duties, and will help public bodies to meet their statutory duties.

The five principles of a Children's Rights Approach are:

- Embedding children's rights – putting children's rights at the core of planning and service delivery.
- Equality and non-discrimination – ensuring that every child has an equal opportunity to be the best they can be.

- Empowering children – enhancing children’s capabilities as individuals so they’re better able to take advantage of rights, and engage with and hold accountable the institutions and individuals that affect their lives.
- Participation – listening to children and taking their views meaningfully into account.
- Accountability – authorities should be accountable to children for decisions and actions that affect their lives.

A Children’s Rights Approach means that organisations will prioritise children’s rights in their work with children and families to improve children’s lives, and that all children are given opportunities are given the opportunities to make the most of their talents and potential. This includes giving children access to information and resources to enable them to take full advantage of their rights, and meaningful opportunities to influence decisions about their lives. It also means that Authorities and individuals should be accountable to children for decisions, and for outcomes that affect their lives. The principles of these new transparency proposals are therefore consistent with a children’s rights approach, but the way the proposals are currently expressed, there is no recognition of how this will be facilitated in order to comply with such an approach.

In addition, local authorities have existing duties in relation to securing children’s participation under the Children and Families Measure 2010; I was surprised to see that this hasn’t been referenced in this draft so it is unclear whether this proposal amends, extends, replaces or sits alongside existing duties.

I consider that these proposals are under-developed in respect of their application to children; I have considered the Children’s Rights Impact

Assessment in detail and will set out below how this could have been utilised to better develop the thinking in relation to these proposals.

Children's Rights Impact Assessment (CRIA)

I welcome the fact that a CRIA has been published alongside the draft Bill, in line with the Children's Rights Scheme 2014. However, I was disappointed to note that the CRIA focuses primarily on the Votes at 16 proposals but still does not contain the same level of detail and analysis as the Senedd and Elections Bill CRIA, which set out international comparisons and worked through the positives and negatives of different options. The CRIA is extremely broad and states in general terms that almost all children's rights are engaged and these rights will benefit from a strengthened system of democracy without any detailed consideration, analysis, or application to the proposals as a whole.

Similarly to the Health (Quality and Engagement) (Wales) Bill that was introduced earlier this year, it is not clear from the published documents how some of the proposals have been created and developed, whether or not they apply to children, and if so, to what extent, and what adjustments may be needed in order to apply certain provisions to children and young people. The Transparency provisions are a crucial example of this; the plans are broad in terms of introducing new participation and accountability mechanisms without any recognition that there may need to be different approaches/structures/resources in order to ensure that this reaches children and young people. The issues being considered by CJs are extremely relevant to the everyday lives of children and young people, and yet there is no reflection of how their views will be sought or acted upon by these bodies.

The CRIA reflects feedback to previous consultations around local government reform in respect of children's rights but does not reflect how these points are

being addressed in the Bill that is now being taken forward or anything that has been changed as a result of this feedback.

I could not see any evidence within the CRIA of consultation with children and young people regarding the current proposals. I am aware that there was some engagement under the previous proposals, when the then Cabinet Secretary for Local Government Mark Drakeford met members of my advisory panel and community ambassador groups on Cardiff and Llandudno.

A more developed CRIA would have at least identified that further thought and work would be required, whether at this stage or further in to the process, to ensure that children are actively considered during the policy development phases, and when the policy itself is enacted, should the Bill pass. Whilst I welcome the inclusion of the statement - "Guidance to be issued in conjunction with this duty will make it clear that principal councils will be expected to have clear strategies and ways of engaging with children and young people and incorporating their views in to their decision making processes", in my view this will not be sufficient to ensure that this is picked up in a consistent way by all principal councils, nor does it reflect how young people's views will feed into this work.

The lack of consideration within the CRIA of the points in this final section of my letter is a significant gap in my view and I'd recommend that the CRIA is revisited for this reason.

Yours sincerely



Sally Holland

Children's Commissioner for Wales